

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2024

Public Authority: The Governing Body of the University of
Coventry

Address: Priory Street
Coventry
CV1 5FB

Decision (including any steps ordered)

1. The complainant has requested communications between the University of Coventry ('the University') and the Universities & Colleges Employers Association ('the UCEA'). The University withheld the requested information, citing section 41 (information provided in confidence).
2. The Commissioner's decision is that emails that originated from the University don't engage section 41 and therefore must be disclosed. The remainder of the emails engage section 41 and the public interest favours maintaining the confidence.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation:
 - Disclose the emails referred to in paragraph 15, with all personal data redacted under section 40 (personal information).
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 18 August 2023 the complainant requested:

"I am writing to inquire about The UCEA and Coventry University Communications.

1. Any received or sent communications between the following two parties and subject to the conditions explained afterwards:

Party 1: UCEA (the term UCEA shall be understood comprehensively, including but not limited to their regular updates, exceptional updates, consultation queries, matters related to the UCU dispute, etc.)

Party 2: Any of: (names of individuals redacted)

2. - When fulfilling this request, please include any follow up discussions between members of your university that arise upon receipt of a communication from party 1. This can be understood as e-mail chains, forwarding UCEA e-mails, internal replies or memorandums etc.

A2.- Please limit the search and disclosure to events that took place after the 1st January 2023."

6. The University responded on 6 November 2023. It refused part 1 of the request, for communications between named individuals and the UCEA, under section 41 (information provided in confidence). It refused part 2 of the request, for any internal follow up communications, under section 12 (cost of compliance exceeds appropriate limit).
7. The complainant requested an internal review on 27 November 2023.
8. The University provided its internal review outcome on 30 January 2024, upholding its previous positions.

Scope of the case

9. The complainant contacted the Commissioner on 30 January 2024 to complain about the way their request for information had been handled.
10. They only raised a complaint about the University's handling of part 1 of their request, being the University's decision to refuse to provide copies of communications it had exchanged with the UCEA under section 41.

11. Therefore, the scope of the Commissioner's investigation is to determine whether the University was correct to do so.

Reasons for decision

Section 41 – information provided in confidence

12. Section 41(1) of FOIA states that information is exempt from disclosure under the FOIA if:
 - a) it was obtained by the public authority from any other person (including another public authority), and
 - b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
13. The withheld information in this case is 373 emails, the majority of which don't originate from the University, they were obtained by another person, the UCEA.
14. However, the Commissioner has identified half a dozen emails that did originate from the University, and fall within the scope of the request in that they are between the UCEA and at least one of the parties named in the request.
15. The Commissioner accepts these emails are sent in response to emails received by the UCEA. However, they do not originate from another person, they originate from the University. The University has failed to demonstrate or explain to the Commissioner how these emails it has sent to the UCEA (taken in isolation, without the rest of the email thread) contain any information obtained from the UCEA and the Commissioner can't see that they do. Therefore, immediately section 41 can't apply and these emails (found at pages page 534, 651, 656, 658, 661 and 694 of the bundle the University provided to the Commissioner) must be disclosed.
16. Returning to the emails that originated from the UCEA, not the University, in order for disclosure to represent a breach of confidence, the information:
 - must have the necessary quality of confidence;
 - must have been imparted in circumstances importing an obligation of confidence;
 - must be an unauthorised use of the information to the detriment.

17. The University has explained:

“The disputed information relates to specific member-only information and communications, which are not accessible to the wider public. The communications range from guidance on all employment and reward matters relevant to the HE sector to member events and newsletters only accessible via the members' area and as part of the membership.”

18. The Commissioner is satisfied that the withheld information is worthy of protection in the sense that the UCEA has a genuine interest in the contents remaining confidential, because it's business model usually charges for the information.

19. The Commissioner is satisfied that the withheld information is neither trivial nor otherwise accessible. Therefore it has the necessary quality of confidence.

20. The Commissioner is also satisfied that the information was imparted in circumstances imparting an obligation of confidence, owing to clause 4.2 of the UCEA's terms and conditions¹ for members, which states:

“UCEA materials, or extracts from them, which are not publicly available on the UCEA website cannot be made public or distributed to other organisations or individuals without UCEA's explicit prior consent.”

21. The Commissioner must now consider whether unauthorised disclosure would cause a specific detriment to the party that provided it or any other party.

22. The University has explained:

“The communications from UCEA contain commercially sensitive information that is not accessible to the public and is exclusively provided to its members under the membership fee... such disclosures may provide insights into UCEA's strategic planning and service delivery methods, enabling competitors to adjust their own events and training programmes accordingly. Consequently, this could substantially undermine UCEA's competitive advantage and market position.”

23. If the requested information were disclosed, it would allow individuals to access information which is usually protected behind a paywall, thus

¹ [Conditions of Membership \(ucea.ac.uk\)](https://www.ucea.ac.uk/conditions-of-membership)

undermining the UCEA's commercial interests and business model. It would also allow competitors to tailor their offering in an attempt to undermine the UCEA. Obviously, both scenarios would be at detriment to the UCEA.

24. What this means is, were the University to breach this confidence and disclose the requested information, it's likely that the UCEA would be able to bring against it an actionable breach of confidence.
25. Although section 41 is an absolute exemption, it's accepted that if there is an overriding public interest in disclosure, this can be used as a defence against any breach of confidentiality that might be brought against a public authority disclosing information under FOIA. In other words, the Commissioner must balance the public interest in the information with the inherent public interest in preserving the principle of confidentiality.
26. The complainant has a specific interest in the UCEA, its role and its engagement with higher education providers, this is a valid interest for them to have. However, the Commissioner can't identify any public interest in the requested information, beyond the general public interest in public authority's being transparent and accountable by complying with requests that it receives under FOIA.
27. The UCEA describes itself as 'the leading voice on employment and reward matters in the UK HE sector. We support our members to be employers of choice through collaboration, advocacy and expert advice.'
28. The University is concerned that disclosure 'would not only cause substantial harm to UCEA's commercial interests but also adversely affect the positions of its members regarding Union and Pay disputes. This could disrupt ongoing negotiations and have far-reaching implications for the daily operations of universities, including impacting teaching and learning.'
29. The University has clarified that the UCEA makes a significant amount of information, including its approach to pay negotiations and industrial action, available to the public on its website² which goes a long way to satisfy the public interest in the request. The Commissioner must consider whether undermining the trust between the University and the UCEA would be proportionate, given the information that's already in the public domain.

² [Home \(ucea.ac.uk\)](https://ucea.ac.uk/); [Union disputes 2023-24 \(ucea.ac.uk\)](https://ucea.ac.uk/union-disputes-2023-24/); [2023-24 New JNCHES pay round \(ucea.ac.uk\)](https://ucea.ac.uk/2023-24-new-jnches-pay-round/)

30. On this occasion, the Commissioner is satisfied that section 41 applies and the public interest lies in preserving the principle of confidentiality, for all emails except those referred to in paragraph 15.

Procedural matters

31. Section 10 of FOIA states that a public authority must comply with a request as soon as possible and no later than twenty working days after receipt of the request.
32. The University breached section 10 in both its original handling of the request and in failing to disclose all non-exempt information within the statutory timeframe.

Right of appeal

33. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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